UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,498	01/26/2001	David A. Maltz	10767/5	6229

39368	7590	07/20/2004

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EXAMINER
DALENCOURT, YVES

ART UNIT	PAPER NUMBER
2157	

DATE MAILED: 07/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 January 2001*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-40* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *4*.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

This office action is responsive to communication filed on 01/26/01.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 40 are rejected under 35 U.S.C. 102(e) as being anticipated by Fletcher et al (US 6,085,243; hereinafter Fletcher).

Regarding claims 1, 11 – 13, 16 - 19, 26, 28 – 31, 34 – 35, 37, and 40, Fletcher teaches a system for collection and storage of traffic data (fig. 1), the system comprising a first point of presence in a computer network, the first point of presence comprising at least one network element; a storage device remote from the first point of presence (col. 8, lines 20 – 45; col. 13, lines 33 – 39; see abstract); and a first processor operative to collect traffic data from the at least one network element in the first point of presence, analyze the collected traffic data (col. 4, lines 14 – 49), and transmit a result of the analysis to the storage device (col. 6, lines 25 – 35; col. 8, lines 46 - 55).

Regarding claims 2, 6 - 8, 20, 36, and 38 – 39, Fletcher teaches a special application program, sometimes referred to as an RMON Manager, which automatically tracks network traffic volume and errors for each ES MAC address seen on a segment and maintains a Host Matrix table of MAC address pairs that have exchanged packets and the traffic volume and errors associated with those address pairs. Such RMON also permits the collection and maintenance of historical network performance metrics thereby facilitating trend analysis and proactive performance monitoring (col. 4,

lines 37 – 44; claimed the first processor is operative to predict traffic demands based on the

collected traffic data and transmit the predicted traffic demands to the storage device).

Regarding claims 3, 21, 24 - 25, Fletcher teaches a system for collection and storage of traffic

data (fig. 1), wherein the first processor is operative to perform at least one of the following analyses:

generating statistical summaries of the collected traffic data, compressing the collected traffic data,

filtering the collected traffic data, performing unit conversion on the collected traffic data, summarizing

the collected traffic data, performing statistics synthesis on the collected traffic data, performing a

missing value calculation on the collected traffic data, and scheduling when the collected traffic data

should be transmitted to the storage device (col. 15, lines 14 – 37; col. 17, lines 24 - 42).

Regarding claims 4 and 22, Fletcher teaches a system for collection and storage of traffic data

(fig. 1), wherein a number of bytes required to transmit the result of the analysis from the first

processor to the storage device is less than a number of bytes required to transmit the collected

traffic data from the first processor to the storage device see col. 7, lines 17 – 24; Fletcher discloses

that the dRMON agents routinely perform this analysis and forward the results (not the entire packets;

less bytes than the collected data) to the collector).

Regarding claims 5, 23, and 27, Fletcher teaches a system for collection and storage of traffic

data (fig. 1), which further comprises a second processor operative to analyze the results stored in

the storage device (col. 8, lines 58 – 63).

Regarding claims 9 - 10, Fletcher teaches a system for collection and storage of traffic data

(fig. 1), which further comprises a second processor operative to collect the results stored in the

storage device, analyze the collected results, and transmit the results of the analysis of the collected

results to a second storage device (54, fig. 1; col. 8, lines 20 - 28).

Regarding claims 14 and 32 Fletcher teaches a system for collection and storage of traffic

data (fig. 1), wherein the first processor is located in the first point of presence (col. 19, lines 19 - 23).

Regarding claims 15 and 33, Fletcher teaches a system for collection and storage of traffic

data (fig. 1), wherein the first processor is located external to the first point of presence (col. 19, lines

19 - 23).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded
in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise
extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple
assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759
F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA
1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528,
163 USPQ 644 (CCPA 1969).
A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to
overcome an actual or provisional rejection based on a nonstatutory double patenting ground
provided the conflicting application or patent is shown to be commonly owned with this application.
See 37 CFR 1.130(b).
Effective January 1, 1994, a registered attorney or agent of record may sign a terminal
disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 – 2, 4 – 20, and 22 - 40 are provisionally rejected under the judicially created doctrine

of obviousness-type double patenting as being unpatentable over claims 1 - 33 of copending

Application No. 09/771,500. Although the conflicting claims are not identical, they are not patentably

distinct from each other because claims 1 – 2, 4 – 18, and 37 - 39 of US Application No. 09/771,498

recite a system for collection and storage of traffic data, the system comprises a first point of

presence in a computer network, the first point of presence comprising at least one network element

as compared to claims 16 – 32 of US Application No. 09/771,500, which recite a first point of

presence in a computer network, the first point of presence comprising a plurality of network

elements, each operating with a different protocol. Also, claims 19 – 20, 22 – 36, and 40 of US

Application No. 09/771,498 recite a method and system for collection and storage of traffic data in a

computer network, which collects traffic from at least one network element in a first point of presence

in a computer network as compared to claims 1 – 5, and 33, which collects traffic data from a plurality of network elements in a first point of presence in a computer network.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Volkmar Heuer (US Patent Number 6,205,121) discloses a method of establishing logical connections in a synchronous digital communications network, as well as network elements and management system.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yves Dalencourt whose telephone number is (703) 308-8547. The examiner can normally be reached on M-TH 7:30AM - 6: 30PM.
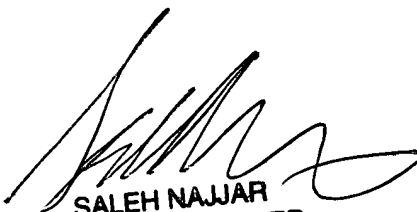
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (703) 308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application

Information Retrieval (PAIR) system. Status information for published applications may be obtained

from either Private PAIR or Public PAIR. Status information for unpublished applications is available

through Private PAIR only. For more information about the PAIR system, see http://pair-

direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yves Dalencourt
July 5, 2004

SALEH NAJJAR
PRIMARY EXAMINER